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8 **BEFORE THE**  
9 **BOARD FOR PROFESSIONAL ENGINEERS AND LAND SURVEYORS**  
10 **DEPARTMENT OF CONSUMER AFFAIRS**  
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

Case No. 951-A

13 **J.B. NEWTON**  
14 **19697 Day Lane**  
15 **Redding, California 96002**  
16 **Civil Engineer License No. C 55936**

**A C C U S A T I O N**

Respondent.

17 Complainant alleges:

18 **PARTIES**

19 1. David E. Brown (Complainant) brings this Accusation solely in his official capacity  
20 as the Executive Officer of the Board for Professional Engineers and Land Surveyors,  
Department of Consumer Affairs.

21 2. On or about July 26, 1996, the Board for Professional Engineers and Land Surveyors  
22 issued Civil Engineering License No. C 55936 to J.B. Newton (Respondent). The Civil  
23 Engineering License was in full force and effect at all times relevant to the charges brought herein  
24 and expired on December 31, 2010.

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## JURISDICTION

3. This Accusation is brought before the Board for Professional Engineers and Land Surveyors (Board), Department of Consumer Affairs ("Board"), under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

4. Section 6775 of the Code states, in pertinent part, that "[T]he board may reprove, suspend for a period not to exceed two years, or revoke the certificate of any professional engineer registered under this chapter:

". . . (c) Who has been found guilty by the board of negligence or incompetence in his or her practice.

. . .

(h) Who violates any provision of this chapter."

5. Section 125.3 of the Code provides, in pertinent part, that the Board may request the administrative law judge to direct a licentiate found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

6. Section 118, subdivision (b), of the Code provides that the suspension/expiration/surrender/cancellation of a license shall not deprive the Board/Registrar/Director of jurisdiction to proceed with a disciplinary action during the period within which the license may be renewed, restored, reissued or reinstated.

## BACKGROUND

7. In or about September 2007, consumers C.G. and J.G. purchased a single family residence located at 4041 Rainbow Drive, Weed, California constructed by River Valley Construction. As part of said construction, River Valley Construction built a four foot high, concrete retaining wall at the rear of the residence without engineering or necessary permits from the Siskiyou County Building Department.

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1           8.     In or about December 2007, River Valley Construction hired Respondent J.B.  
2     Newton to determine and evaluate the as-built construction of the aforesaid retaining wall to  
3     obtain approval of the retaining wall by the Siskiyou County Building Department.

4           9.     Based upon her visual inspection of the subject retaining wall and review of  
5     photographs provided to her by River Valley Construction, Respondent prepared "Structural  
6     Calculations for As-Built Retaining Wall for River Valley Construction" dated January 4, 2008,  
7     setting forth structural calculations and details for the as-built construction of the retaining wall,  
8     and submitted them to the Siskiyou County Building Department for approval. Thereafter, the  
9     Siskiyou County Building Department approved Respondent's submittal, subject to a required  
10    "special inspection" of the retaining wall by a California licensed engineer or architect.

11          10.    In or about March 2008, River Valley Construction again hired Respondent to  
12    perform the required "special inspection" of the subject retaining wall. On or about March 3,  
13    2008, Respondent again visually inspected the subject retaining wall and prepared a "Special  
14    Inspector's Report" dated March 6, 2008, stating that "all work done on this job to date has been  
15    satisfactorily completed and conforms to the approved plans and requirements of the Siskiyou  
16    County Code." Said "Special Inspector's Report" was submitted to the Siskiyou County Building  
17    Department.

18          11.    On or about March 13, 2008, Respondent received photographs of excavations of  
19    footings and other components of the subject retaining wall. Respondent acknowledged that  
20    according to the photographs, the retaining wall was not built as described in her "Structural  
21    Calculations for As-Built Retaining Wall for River Valley Construction" dated January 4, 2008.  
22    Respondent notified River Valley Construction that she would request testing to reveal the as-  
23    built construction of the retaining wall, including the rebar, concrete thickness and rebar spacing  
24    of the retaining wall.

25          12.    Some time after June 1, 2008, at the request of River Valley Construction,  
26    Respondent performed another visual inspection of the subject retaining wall to assess the  
27    structural suitability of certain footings along the patio. Based upon a visual inspection, and  
28    without any testing to reveal the as-built construction of the retaining wall, including the rebar,

1 concrete thickness and rebar spacing, and notwithstanding the photographs of excavations of  
2 footings and other components of the subject retaining wall described in Paragraph 11,  
3 Respondent determined that the footings were “more than adequate, assuming that the pads were  
4 poured according to the plans”.

### 5 **FIRST CAUSE FOR DISCIPLINE**

6 (Negligence)

7 13. Based upon the allegations of Paragraphs 7 through 12 above, Respondent is subject  
8 to disciplinary action under section 6775(c) in that she committed acts or omissions that are  
9 negligent and below the minimum standard of practice for civil engineers in the State of  
10 California in the respects described below.

11 (a) Respondent prepared “Structural Calculations for As-Built Retaining Wall for River  
12 Valley Construction” based upon a visual inspection of the retaining wall and review of  
13 photographs provided by River Valley Construction. Respondent prepared said report without  
14 excavation or testing procedures that if performed, would have provided pertinent information  
15 regarding the actual as-built construction of the components of the retaining wall, including the  
16 rebar, concrete thickness, rebar spacing and whether or not its footings complied with applicable  
17 codes, approved plans or design, and/or provided adequate support for the retaining wall.

18 (b) Respondent prepared the “Special Inspector’s Report” based upon a visual inspection  
19 of the retaining wall without excavation or testing procedures that if performed, would have  
20 provided pertinent information regarding the actual as-built construction of the components of the  
21 retaining wall, including the rebar, concrete thickness, rebar spacing and whether or not its  
22 footings complied with applicable codes, approved plans or design, and/or provided adequate  
23 support for the retaining wall.

### 24 **SECOND CAUSE FOR DISCIPLINE**

25 (Incompetence)

26 14. Based upon the allegations of Paragraphs 7 through 12 above, Respondent is subject  
27 to disciplinary action under section 6775(c) in that she committed acts or omissions manifesting  
28 incompetence in the practice of civil engineering in the respects described below.

1 (a) Respondent prepared the "Structural Calculations for As-Built Retaining Wall for  
2 River Valley Construction" based upon a visual inspection of the retaining wall and photographs  
3 provided by River Valley Construction. Respondent purported to ascertain and evaluate the as-  
4 built construction of the retaining wall without excavation or testing procedures that if performed,  
5 would have provided pertinent information regarding the actual as-built construction of the  
6 components of the retaining wall, including the rebar, concrete thickness, rebar spacing and  
7 whether or not its footings complied with applicable codes, approved plans or design, and/or  
8 provided adequate support for the retaining wall.

9 (b) Respondent prepared the "Special Inspector's Report" based upon her visual  
10 inspection of the retaining wall without excavation or testing procedures that if performed, would  
11 have provided pertinent information regarding the actual as-built construction of the components  
12 of the retaining wall, including the rebar, concrete thickness, rebar spacing and whether or not its  
13 footings complied with applicable codes, approved plans or design, and/or provided adequate  
14 support for the retaining wall.

15 (c) Respondent failed to notify the Siskiyou County Building Department that after  
16 submission of "Structural Calculations for As-Built Retaining Wall for River Valley  
17 Construction" and "Special Inspector's Report" to the Siskiyou County Building Department, she  
18 received photographs showing that the as-built construction of the subject retaining wall was not  
19 built as she had represented therein, and its footings may be inadequate to support the retaining  
20 wall.

### 21 **THIRD CAUSE FOR DISCIPLINE**

22 (Violation of Provisions of Chapter)

23 15. Based upon the allegations of Paragraphs 7 through 12 above, Respondent is subject  
24 to disciplinary action under section 6775(h). Respondent submitted her "Special Inspector's  
25 Report" without including her engineering stamp or seal thereon in violation of section 6735(a).

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PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Board for Professional Engineers and Land Surveyors issue a decision:

1. Revoking or suspending Civil Engineer License Number C 55936, issued to J.B. Newton;

2. Ordering J.B. Newton to pay the Board for Professional Engineers and Land Surveyors the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3; and

3. Taking such other and further action as deemed necessary and proper.

DATED:

August 6 2010

Original Signed

DAVID E. BROWN

Executive Officer

Board for Professional Engineers and Land Surveyors

Department of Consumer Affairs

State of California

*Complainant*

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